

1 **III. REMARKS REGARDING AMENDMENTS TO THE DRAWINGS**

2 1. At page 2/paragraph 1 the Examiner has Objected to Figure 6 as showing modified
3 form of construction in the same view not in compliance with 35 CFR 1.84(h)(5). Your
4 applicant submitted a Replacement Sheet in the Response of 10/4/04. Your applicant has
5 again submitted the same Replacement Sheet with markings and a note advising of the
6 change from the original Fig. 6. The Replacement Sheet and the Immediate Prior version
7 of Fig. 6 are provided in accordance with 37 CFR 1.121(d).

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Serial No. 10/647,030

Floyd E. Ivey, USPTO 35552,

Application No. 10/647,030

1 **IV. SUMMARY OF AMENDMENTS TO CLAIMS AND REMARKS**

2 **1. 35 U.S.C. 112 Rejections**

3 A. At page 4 paragraph 5 the Examiner states that claims 1-6 are rejected as being
4 indefinite for failing to particularly point out and distinctly claim the subject matter
5 regarded as the invention. The Examiner states that the lengthily claims are replete with
6 indefiniteness with examples listed: through the claims, the Examiner notes that the word
7 "means" is used excessively stating that "generally, the word "means" is preceded by a
8 word in an attempt to use a "means" clause to recite a claim element..." Your applicant
9 has found two instances, in claims 6 and 9, where the word "means" was not preceded by
10 a word attempting to recite a claim element. With the exceptions of the two following
11 instances your applicant respectfully directs the Examiner to the other instances of the use
12 of "means" with the belief that each is properly preceded.

13 Your applicant has review the use of the word "means" and finds the following:

14 1. in claim 6. b. "the second roll interconnection plate (320) affixed by means to
15 the second vehicle (20)" and has amended claim 6.b. to state "the second roll
16 interconnection plate (320) affixed by immovable plate affixing means to the second
17 vehicle (20)..." Antecedent basis if found in the specification at page 7, line 16.

18 2. in claim 9. b. "the second roll interconnection plate (320) affixed by means to
19 the second vehicle (20)" and has amended claim 9.b. to state "the second roll
20 interconnection plate (320) affixed by immovable plate affixing means to the second
21 vehicle (20)..." Antecedent basis if found in the specification at page 7, line 16.

22 Your applicant respectfully requests the Examiner to withdraw the rejection and
23 allow the claims.

24
25 B. At page 4 paragraph 5 the Examiner notes the use of "means of" as vague and

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1 indefinite. Your applicant finds "means of" as follows:

2 Claim 1.b. states "yaw assembly interconnection means of the pitch assembly
3 (100) and the yaw assembly". Your applicant respectfully indicates that this instance of
4 "means of" correctly refers to the interconnection between the pitch assembly and the
5 yaw assembly.

6 A like use is seen in Claim 1.c.

7 A like use is seen in claim 2.d.

8 Your applicant respectfully requests the Examiner to withdraw the rejection and
9 allow the claims.

10
11 C. At page 5, paragraph 5, the Examiner observes the use of "double positive
12 recitations" indication, as an example, "Claim 3, line 27 (yaw interconnection means)".
13 Your applicant respectfully submits that this is a stylistic matter. Your applicant does not
14 find a reference in the MPEP or in case law regarding "double positive recitations" and
15 respectfully requests the Examiner to withdraw any rejection on this grounds.

16
17 D. At page 5, paragraph 5, the Examiner states that in Claim 5, line 6, the
18 recitation that "the motor means is affixed to the at least one first yaw assembly plate
19 (210) the motor shaft (410)" does not make sense. Accordingly claim 5 has been
20 amended to read "...the at least one second yaw assembly plate (220) and the motor shaft
21 (410), either ~~directly or by gear means~~ connected by torque means, ~~connected to the shaft~~
22 ~~or shaft interrelated with gear interconnection means~~, including by key notch means or
23 gear means ~~interconnected to the at least one first yaw assembly plate (210);~~"

24 Your applicant respectfully requests the Examiner to withdraw the rejection and to
25 allow the claim.

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1 2. 35 U.S.C. 102 Rejections

2 A. The Examiner, at page 5, paragraph 7, asserts that claims 1-4 are anticipated
3 by Fromberg. Your applicant has amended claim 1, cancelled claim 2 and amended claim
4 3. The structure of your applicant's invention is distinguished from the structure of
5 Fromberg. Your applicants invention is briefly reviewed specifically regarding the roll
6 structure. In the Specification at page 7 commencing at line 18:

7 In the embodiments of this invention, the first roll interconnecting means (330) is
8 comprised of threaded means received by second roll interconnecting means (340)
9 which are comprised of complementary receiving threaded means, i.e., as will be
10 appreciated by those of ordinary skills, where the first roll interconnecting means
11 (330) is a male threaded element, the second roll interconnecting means (340) will
12 be a female threaded element.

13
14 Additionally, claim 1 has been amended to assert "j. yaw power means comprised
15 of motor means (400)."

16 The Examiner is respectfully directed to the "threaded" roll structure of your
17 applicants invention. Fromberg illustrates bearing surfaces providing a roll feature. The
18 bearing surfaces are not "threaded". Fromberg does not provide the same structure as is
19 provided by your applicant.

20 Fromberg does not disclose "motor means".

21 A rejection for anticipation under section 102 requires that each and every
22 limitation of the claimed invention be disclosed in a single prior art reference. (*In Re*
23 *Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Such is not
24 disclosed by Fromberg. The reference does not anticipate. The Examiner is respectfully
25 requested to withdraw the rejection based on Fromberg. The Examiner is additionally

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1 referred to the following statement of pertinent law.

2 Your applicant respectfully requests the Examiner to withdraw the said rejection
3 and to allow claim 1, 3 and 4 as amended.

4
5 B. The Examiner, at page 5, asserts that claims 1-4 are anticipated by Dion.
6 The Examiner concludes, at page 6, that "Since Dion teaches the structure as claimed, the
7 device will inherently function as claimed.." Claims 1 and 3 have been amended and
8 claim 2 cancelled. The Examiner is directed to the means of providing "roll" by Dion at
9 column 4, lines 46-47 "...allows relative rotational movement of these two elements in
10 roll that is about the longitudinal vehicle axis, tube 64 serving as a pivot."

11 Dion's structure re: roll is not the "threaded" structure of your applicant's
12 invention. Dion's structure is not seen to provide motor means as claimed. Dion's
13 structure does not anticipate as amended. The Examiner is respectfully requested to
14 withdraw the rejection based on Fromberg. The Examiner is additionally referred to the
15 following statement of pertinent law..

16 Your applicant respectfully requests the Examiner to withdraw the said rejection
17 and to allow claim 1, 3 and 4 as amended.

18
19 **3. 35 U.S.C. 103 Rejections**

20 A. The Examiner rejects Claim 5 under 35 USC 103(a) as unpatentable over Dion
21 in View of Hyler. Your applicant has amended claims 1, 3 and 5. Your applicant has
22 reviewed Hyler and finds no evidence of a "threaded" structure providing roll. There is
23 not seen to be motor means. Dion did not present these structures. There is not indicated
24 any motivation to combine Dion and Hyler. Absent the structure of "threaded" roll
25 structure, the combination must be seen to teach away from your applicant's invention.

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1 Your applicant urges the Examiner to conclude that as amended, Dion in view of Hyler
2 does not teach, direct or suggest the invention of your applicant.

3 The Examiner is directed to the statement of pertinent law as follows.

4 Your applicant respectfully requests the Examiner to withdraw the said rejection
5 and to allow claim 5 as amended.

6
7 B. The Examiner rejects Claim 5 under 35 USC 103(a) as unpatentable over Dion
8 in View of Hyler and further in view of Baillargeon. Your applicant has amended claims
9 1, 3 and 5. Your applicant has reviewed Baillargeon and in particular Fig. 7 and does not
10 find "threaded" roll structure or motor means. Your applicant incorporates the foregoing
11 arguments. There is not indicated any motivation to combine Dion, Hyler and
12 Baillargeon. Absent the structure of "threaded" roll structure, the combination must be
13 seen to teach away from your applicant's invention. Your applicant urges the Examiner to
14 conclude that as amended, Dion in view of Hyler in further view of Baillargeon does not
15 teach, direct or suggest the invention of your applicant.

16 The Examiner is directed to the statement of pertinent law as follows.

17 Your applicant respectfully requests the Examiner to withdraw the said rejection
18 and to allow claim 5 as amended.

19
20 Law regarding 35 U.S.C. 102.

21 A rejection for anticipation under section 102 requires that each and every
22 limitation of the claimed invention be disclosed in a single prior art reference. (*In Re*
23 *Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); For a prior art
24 reference to anticipate in terms of 35 U.S.C. S 102, every element of the claimed
25 invention must be identically shown in a single reference. The elements must be arranged

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1 as in the claim under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567
2 (Fed. Cir. 1990). Prior art anticipates an invention ... if a single prior art reference
3 contains each and every element of the patent at issue, operating in the same fashion to
4 perform the identical function as the patented product. "Thus, any degree of physical
5 difference between the patented product and the prior art, NO MATTER HOW SLIGHT,
6 defeats the claim of anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F.
7 Supp. 308, 32 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); It is incumbent upon the
8 examiner to identify wherein each and every facet of the claimed invention is disclosed in
9 the applied reference. (*Ex Parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'l
10 1990)). Since the structures of Fromberg and Dion differ from that shown herein, the
11 reference must be discounted as anticipating the present invention.

12 The applicant has demonstrated differences between features of the referenced
13 prior art and the present invention as specified and claimed. The applicant has presented
14 features of the present invention which are not found within the claims of either reference
15 patent. The applicant has presented law and argument to support the contention that the
16 rejection of claims 1- 4, under 35 U.S.C. 102(b) should be withdrawn and now
17 respectfully requests the Examiner to withdraw the rejections.

18
19 Law regarding 35 U.S.C. 103.

20 The absence of a feature similar to the feature or features of the present invention
21 are respectfully argued as references which teach away from the disclosed and claimed
22 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27
23 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of
24 development flowing from the references disclosure is unlikely to be productive of the
25 result sought by the applicant. The lack of a "threaded" roll structure and motor means in
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1 the cited patents of Dion, Hyler, and Baillargeon does not flow toward the "roll" structure
2 and motor means of the present invention.

3 The Examiner has urged prior art alone and in combination as rendering obvious
4 the present invention. However, there is not demonstrated teaching, suggestion or
5 motivation to so combine the several components in the manner done by your present
6 applicant. Such recitation of prior art does not form a basis for rejection as obvious. C.R.
7 Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1361, 48 USPQ2d 1225, 1240 (Fed. Cir.
8 1998), rehearing denied & suggestion for rehearing in banc declined, 161 F.3d 1380 (Fed.
9 Cir. 1998) ("The ultimate question is whether, from the evidence of the prior art and the
10 knowledge generally available to one of ordinary skill in the relevant art, there was in the
11 prior art an appropriate teaching, suggestion, or motivation to combine components in the
12 way that was done by the inventor."); Chiuminatta Concrete Concepts, Inc. v. Cardinal
13 Industries, Inc., 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a
14 claim to be invalid for obviousness over a combination of references, there must have
15 been a motivation to combine the prior art references to produce the claimed invention.");
16 Kahn v. General Motors Corp., 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert.
17 denied, 119 S. Ct. 177 (1998); Fromson v. Anitec Printing Plates, Inc., 132 F.3d 1437,
18 1447, 45 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there
19 is no suggestion or teaching in the prior art to select from the various known procedures
20 and combine specific steps, along with a new electrical structure, in the way that is
21 described and claimed by [the patentee]."); Gambro Lundia AB v. Baxter Healthcare
22 Corp., 110 F.3d 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the
23 record must provide a teaching, suggestion, or reason to substitute computer-controlled
24 valves for the system of hoses in the prior art. The absence of such a suggestion to
25 combine is dispositive in an obviousness determination."; "Without a suggestion or
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1 teaching to combine, [the accused infringer's] case of obviousness suffers a significant
2 deficiency."); Kolmes v. World Fibers Corp., 107 F.3d 1534, 1541, 41 USPQ2d 1829,
3 1833 (Fed. Cir. 1997) (the district court did not err in holding the patent in suit not invalid
4 for obviousness; the patent concerned a cut-resistant yarn for use in making products such
5 as gloves, which, unlike prior art yarns, did not use metallic components such as wire; the
6 yarn includes two core strands wrapped in opposite directions around two covering
7 strands; one core strand is fiberglass; the other core strand and the covering strands are
8 nylon or other material; the patent's claim required, inter alia, that there be a two strand
9 core and that the covering strands be "wrapped about said core at the rate of 8-12 turns
10 per inch."; a prior art reference showed a yarn with a wrapping rate of 2-24 turns per inch,
11 but the reference disclosed the use of wire, and the accused infringer "has shown no
12 suggestion or motivation to modify the teaching of the [reference] with regard to
13 non-metallic fibers."); Litton Systems, Inc. v. Honeywell, Inc., 87 F.3d 1559, 1568, 39
14 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one of the prior art references, alone or in
15 combination, teach or suggest a method [specified in the patent's claims]. The prior art
16 simply does not contain many limitations in the claimed method. Furthermore, the record
17 discloses no teaching or suggestion to combine any of these references. The absence of a
18 suggestion to combine is telling in an obviousness determination."); B.F. Goodrich Co. v.
19 Aircraft Braking Systems Corp., 72 F.3d 1577, 37 USPQ2d 1314 (Fed. Cir. 1996),
20 discussed at N. 12.10(1) infra; Pro-Mold and Tool Co., Inc. v. Great Lakes Plastics, Inc.,
21 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996); Beachcombers, International, Inc. v.
22 WildeWood Creative Products, Inc., 31 F.3d 1154, 1161, 31 USPQ2d 1653, 1659 (Fed.
23 Cir. 1994) (the patent claims in suit were not obvious in view of the prior art because the
24 art did "not remotely suggest configuring" the device as required by the claim);
25 Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc., 21 F.3d 1068,

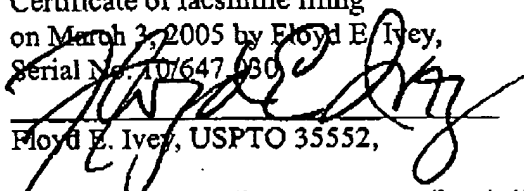
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1 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the patented invention is made
2 by combining known components to achieve a new system, the prior art must provide a
3 suggestion or motivation to make such a combination."). *Texas Instruments Inc. V. U.S.*
4 *Int'l Trade Comm'n*, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir. 1993) for the
5 proposition that obviousness is not supported where the references do not demonstrate to
6 combine to produce the invention as presently disclosed.

7 The issue of viewing the present invention as a template is an inappropriate basis
8 for rejection on the basis of obviousness. The prior art "references in combination do not
9 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to
10 combine the references, respondents can do no more than piece the invention together
11 using the patented invention as a template." *Heidelberger Druckmaschinen AG v.*
12 *Hantscho Commercial Products, Inc.*, 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993
13 where the court held that "The motivation to combine references can not come from the
14 invention itself."

15 The applicant respectfully submits that the references, alone and in combination,
16 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,
17 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*
18 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand
19 for the rule that decomposing an invention into its constituent elements, finding each
20 element in the prior art, and then claiming that it is easy to reassemble these elements into
21 the invention, is a forbidden ex post analysis. The applicant submits that it is
22 impermissible to use the claimed invention as an instruction manual or template to piece
23 together the teachings of the prior art so that the claimed invention is rendered obvious.
24 The references simply do not teach to combine the requisite features of your applicant's
25 invention. "Before the PTO may combine the disclosures of two or more prior art
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1 references in order to establish Prima Facie obviousness, there must be some suggestion
2 for doing so, found either in the references themselves or in the knowledge generally
3 available to one of ordinary skill in the art.(IN RE Jones, 958 F.2d 347, 351, 21 USPQ2d
4 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to
5 combine prior art references may flow, inter alia, from the references themselves, the
6 knowledge of one of ordinary skill in the art, or from the nature of the problem to be
7 solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need
8 not expressly teach that the disclosure contained therein should be combined with
9 another, see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d
10 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must
11 nevertheless be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at
12 1617." Winner International Royalty Corporation v. Ching-Rong Wang, 202 F.3d
13 1340(CAFC 2000).

14 The applicant respectfully requests the Examiner to withdraw the 103 rejections
15 in light of the argument, amendments and responses submitted.

16

17

SUMMARY

18 The applicant has reviewed the Examiner's Action of December 3, 2004, has
19 addressed the Objections and Elections therein and has responded to each with
20 amendments, explanations, arguments and comments.

21 Each aspect of this response is presented by your applicant as a good faith
22 attempt to allow this application to be examined on the merits. Your applicant has
23 amended claims and has cancelled claim 2.

24 Accordingly your applicant requests the Examiner to receive the Response and
25 Amendments and to withdraw the objections and Requirements of Election and to allow

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1 the claims as amended.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION:

The undersigned hereby certifies that this correspondence is being facsimile transmitted to Examiner DANIEL G. DEPUMPO, Telephone 703-308-1113, ART UNIT 3611 at the Patent and Trademark Office, Fax No. (703) 872-9306 on March 3, 2005.

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